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C O N F I D E N T I A L NAIROBI 004327

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TAGS: KDEM PREL KCOR PINR KE

SUBJECT: KENYA'S HEAD PROSECUTOR "COMMITTED" TO ANTI-GRAFT FIGHT, BUT HAMSTRUNG BY THE SYSTEM

REF: NAIROBI 4105

Classified By: Political Counselor Larry Andre for reasons 1.4 (b,d)

¶11. (C) SUMMARY: Kenyan Director of Public Prosecution Keriako Tobiko told the Ambassador that while he is committed to prosecuting high-level corruption cases, the judiciary and the Anti-Corruption Commission are slowing him down. Delivering a message closely echoing that of the Attorney General (reftel), Tobiko accurately outlined the systemic deficiencies impeding the process of bringing Kenya's most corrupt to justice. At the same time, more political will on the part of Tobiko's bosses would go a long way toward successful prosecutions and demonstrating Kenya's genuine commitment to punishing grand-scale corruption. END SUMMARY.

¶12. (C) In his September 29 introductory meeting with Director of Public Prosecution (DPP) Keriako Tobiko, the Ambassador emphasized the need for more action against high-level corruption. Highlighting the ongoing assistance the DPP receives from the Mission, in particular from USAID and the DOJ Resident Legal Advisor, the Ambassador underscored the importance of U.S.-Kenya partnership in this area. He stressed the need for decisive action on high-level corruption cases. Tobiko appreciated the United States' support, remarking how U.S. programs have provided even the infrastructure of his office.

Woe is the DPP

¶13. (C) Overworked, understaffed, and under-appreciated: this is the state of the DPP, Tobiko explained. Despite the challenges, however, he was optimistic that the DPP would be able to move cases forward. A major obstacle, he noted, is the judicial system itself. There are far too few special magistrates, he stated, for the volume of corruption and non-corruption cases which they are required to hear, and if one is transferred in the middle of a case, the proceeding restarts. Part of the problem, he continued, is the archaic nature of the judicial system (testimony is taken down long hand, for example). Further complicating his task, the DPP added, is that his staff has not been sufficiently trained for the international nature of the major corruption scandals.

¶14. (C) "They aren't better, just better financed," Tobiko said of the Kenya Anti-Corruption Commission (KACC). The DPP is concerned not only about the KACC's ability to lure away

members of his team (reftel), but also by the suggestion to transfer prosecutorial responsibility on corruption cases to the KACC. Tobiko highlighted the ways in which the DPP's office is disadvantaged compared to the KACC, remarking that he has as many prosecutors as the KACC has drivers, and that his budget at 94 million shillings is less than one tenth that of the KACC at 1.2 billion.

But Still Hopeful

15. (C) Tobiko was, nonetheless, hopeful. As of earlier this year, objection to prosecution on constitutional grounds no longer automatically stays a case, and he has been given authority to hire 26 special prosecutors (reftel). Also of note, Tobiko added, the Chief Justice has established an interagency committee to examine how cases can be expedited. The DPP was encouraged that finally all of the working parts of successful prosecution - the judges, the attorney general's office, the police - were discussing the process together. In light of widespread rumors about a possible amnesty, the Ambassador asked Tobiko if this was being considered. Tobiko commented that the time for that had passed; it might have been possible when the current government was new. (NOTE: October 1 media reports quoted Justice and Constitutional Affairs Minister Martha Karua as offering exactly this option. END NOTE.)

COMMENT

16. (C) Whether or not high-placed officials are deliberately stalling on major corruption cases, the effect is the same - the Kenyan system for investigation and prosecution is

interminably sluggish all on its own. That said, direction from the top could jump-start the process. Tobiko is rightly concerned about the current political obsession with next year's general election impeding efficient conclusion of outstanding cases. With officials and hopefulls focused on gaining or keeping public office, who is accused and who is actually brought to justice will certainly be affected by politics. Effective prosecution of Kenya's biggest looters before the next election looks increasingly unlikely. END COMMENT.

Bio Note: Tobiko

17. (C) Politically astute and intelligent, Keriako Tobiko was appointed the Director of Public Prosecution in May 2005, following Philip Murgor's removal. At the time, Tobiko was a Commissioner of the Constitution of Kenya Review Commission (CKRC) and a private attorney. Several Kenyans privately questioned his appointment. Not only did he lack prosecutorial experience, but he was representing a leading suspect in the Anglo Leasing scandal.

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